

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE : **No. 98-11,123**
PRIVATE DETECTIVE :
LICENSE OF :
GURN WEBER :
 : **CRIMINAL DIVISION**
 : **Motion To Quash**

ORDER

AND NOW, this ____ day of December 1999, the Court DENIES the Motion to Quash Subpoena filed by Petitioner Gurn Weber and by Petitioner Raymond Betsow.

The Court does not find there is a constitutional defect in the Private Detective Act of 1953, 22 P.S. §15. The Act, in a straight forward way, gives the district attorney significant power to regulate those seeking the benefits of the Act. Thus, an applicant or licensee under the Act is obliged, upon request, to supply information to the district attorney as to his business practices or methods.

Further, the Act gives the district attorney the power to subpoena persons to take deposition under oath and to require production of books or papers deemed relevant to the investigation. The Act indicates that any person, duly subpoenaed, who fails to obey the subpoena or refuses to be examined or to answer questions as to the character or qualifications of the licensee or as to the licensee's business practice or methods, would be guilty of a misdemeanor.

The Court sees no constitutional infirmity in the Act on a vagueness basis. The purpose and directive of the Act is quite clear. The district attorney is given broad investigatory power of individuals operating under the benefit of the Private Detective Act. Full cooperation in supplying records, papers, information and testimony when requested by the district attorney is essential to the effectiveness of this power. The Court sees no vagueness in the significant and

straight-forward power given to the district attorney and in the obligation of those effected by the Act to fully cooperate with the district attorney's performance of the mandate.

While acknowledging that the subpoena may go forward, the Court does not believe the Act strips an individual of his or her rights against self-incrimination under the United States and Pennsylvania Constitutions. If a witness or party is subpoenaed and invokes the Fifth Amendment, a hearing may be requested with the Court to determine if there is a basis for the assertion. Such hearing should only be requested by the district attorney if they contest the applicability of the Fifth Amendment. The facts may be such that the district attorney would acknowledge that there is a basis to claim the Fifth Amendment.¹ If the Fifth Amendment is found applicable, arguments as to the application of immunity could be considered.²

Accordingly, the district attorney may reschedule the appearances of the parties involved pursuant to the subpoenas. Obviously, the time which has gone by in this matter gives all parties ample time to confer with counsel. Any claim not to answer a question should be clearly made on the record with a clear statement of the basis for the claim. Otherwise, all

¹It would seem unlikely that a legitimate exercise of the Fifth Amendment could be construed as a violation of the Act which could lead to a misdemeanor charge. Invocation of the Fifth Amendment would be a reasonable cause to not answer questions under the Act. See 22 P.S. 15(6). However, while not trying to decide this issue now, such assertion of the Fifth Amendment may have bearing on the status of a licensee's privilege to do business under the Act.

²It would seem to the Court that the district attorney, if he is contemplating criminal charges, could create potential future complications to the ability to prosecute if use immunity is granted because it may be difficult to show the evidence utilized in any future criminal proceeding was gathered independent from these proceedings regarding Mr. Weber's private detective license.

Perhaps then prudence might indicate that the use of 22 P.S. §15 should be held in abeyance or delayed until the criminal investigation is resolved. All parties agree that this administrative procedure cannot be utilized to garner criminal evidence.

questions should be answered or information provided in compliance with the Act.

By The Court,

Kenneth D. Brown, J.

cc: Thomas Marino, Esquire, DA
Marc Lovecchio, Esquire